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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,373	12/20/2001	Roy Hansson	P16135US	3524

466 7590 09/15/2004

YOUNG & THOMPSON  
745 SOUTH 23RD STREET 2ND FLOOR  
ARLINGTON, VA 22202

EXAMINER
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KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 09/15/2004

16

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/022,373

Applicant(s)

HANSSON, ROY *OR*

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 5-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 – 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hjorth (US 6,626,882).

With reference to claim 5, Hjorth discloses an absorbent article comprising a liquid permeable topsheet (3), a liquid impermeable backsheet (2) and an absorbent body enclosed therebetween (4); said article having a front portion, a rear portion and a crotch portion therebetween (col. 2, line 66 to col. 3, line 4); a pair of belt portions comprising a first belt portion attached to one side of the rear portion (9), and a second belt portion attached to an opposite side of the rear portion (10); said belt portion, in use, being fastened together around a waist of the wearer (col. 3, lines 9 – 12); said first belt portion carrying first fastening means (11), which in use, are attached against the outside of the second belt portion (col. 3, lines 9 – 12); said front portion exhibiting second fastening means (8), which in use, are attached to the belt portions such that the article will assume a pant shape, where the belt portions form a part of the waist portions of the pant (col. 3, lines 13 – 17); and each belt portion being provided with at least one indicium placed at an appropriate distance from an attachment of each belt portion to the rear portion (9a, 10a), whereby each indicium on the first belt portion has

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a corresponding indicium on the second belt portion (9a corresponds to 10a as shown in figures 1, 2a and 2b), and each indicium on the first belt portion is symmetrically disposed in a longitudinal direction of the belt portions with corresponding indicium on the second belt portion as shown in figure 1.

The difference between Hjorth and claim 1 is the provision that in use a center line of the article is located at a center of the wearer's back.

While Hjorth does not explicitly state that in use a center line of the article is located at a center of the wearer's back, it would be obvious to one of ordinary skill in the art to place a center line of the article of Hjorth at a center of the wearer's back to ensure that the article provides the expected functions. If a centerline of the article is not placed on a center of the wearer's back (i.e. the article is placed off center from the wearer), then one would expect that the article may leak from the sides and allow undesirable soiling and also cause some discomfort to the wearer due to the unnatural positioning of the leg elastics, waist elastics, etc.

Regarding claim 6, Hjorth discloses the indicium as an ornamental design as set forth in col. 3, lines 53 – 58 and figures 2a and 2b.

As to claim 7, Hjorth discloses the indicium as a symbol as set forth in col. 3, lines 53 – 58 and figure 2a.

With reference to claim 8, Hjorth discloses the indicium as colored in col. 4, lines 8 – 13.

***Response to Arguments***

Applicant's arguments filed June 21, 2004 have been fully considered but they are not persuasive.

With respect to the applicant's argument that the indicia of Hjorth are not symmetrically disposed, the examiner disagrees.

"Symmetrical" as defined by Webster's Ninth New Collegiate Dictionary requires a correspondence in size, shape and relative position on parts on opposite sides of a dividing line. Hjorth discloses indicia that meet this requirement as shown in figure 1.

It is noted that the features upon which applicant relies (i.e., the lengths of the belts and the distance of the belt portion from the attachment) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that Hjorth does not provide a diaper that shows a user how to apply such a product, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

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The examiner contends that any line or point on the back of the diaper may be considered a center line including that which is located at the center of the wearer's back.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on 703-308-1412. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Michele Kidwell  
Examiner  
Art Unit 3761



Larry I. Schwartz  
Supervisory Patent Examiner  
Group 3700